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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/630,517	08/02/2000	LINDA GAIL BERNARD	71111	8512

7590 08/27/2002

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EXAMINER

WYROZEBSKI LEE, KATARZYNA I

ART UNIT	PAPER NUMBER
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1714

13

DATE MAILED: 08/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/630,517	Applicant(s) BERNARD ET AL.	
	Examiner Katarzyna W. Lee	Art Unit 1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 June 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 19-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 9-14 and 16 is/are rejected.
- 7) ☒ Claim(s) 5-8, 15, 17 and 18 is/are objected to.
- 8) ☒ Claim(s) 1-29 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |                                                                                                                     |                                                                             |
|---------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                    | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>7, 8, 11</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Objection to the Specification***

In view of the declaration submitted by the applicant along with pages of the laboratory notebook to support changes to the specification, the examiner acknowledges most of the changes. The examiner was not able to find support for changing term from nanocomposite to composite. The applicant is therefore requested to either provide additional showing or point the examiner to a correct page, reciting composite. Until then the specification is objected to as containing new matter.

### ***Abstract***

The examiner was able to locate a 3-line long abstract submitted with declaration. At the same time the applicant has submitted another longer Abstract. The examiner requests that the applicant reconfirm, which abstract is pending. If the longer abstract is pending then the applicant needs to submit it as specified in MPEP on a separate sheet of paper.

### ***Restriction***

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Applicant's election with traverse of Group I in Paper No. 12 is acknowledged. The traversal is on the ground(s) that the claims of Group II are not independent and distinct from the polyamide composition. This is not found persuasive because of the following explanation.

The examiner agrees, that the claims of Group II contain subject matter of Group I and depend on the claims of Group I. However for the fact that they claim a layered structure, examined by an entirely different art unit renders the restriction proper. The examiner also recollects stating that since claims of Group II depend on claim I, when allowable subject matter is indicated, the claims can be rejoined upon applicant's request. If the composition is found allowable, then the method of using that composition will also be allowable.

The requirement is still deemed proper and is therefore made FINAL.

### ***Provisional Double Patenting Rejection***

Examiner confirmed, that the terminal disclaimer has been properly filed with the co-pending application '518. However, if the co-pending application will be in condition for allowance before the invention at hand another terminal disclaimer will have to be filed with this application. For now, the rejection is therefore not withdrawn.

### ***Claim Rejections - 35 USC § 112***

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With respect to applicant's arguments, the examiner understands very well that the Wyoming term "type" is well understood by those skilled in the art. There is no argument about the term "type" being indefinite. This rejection of the claim containing term "type" is therefore not overcome.

*Claim Rejections - 35 USC § 103*

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-4, 9-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt (WO 99/38914) in view of Maxfield (US 5,385,776).

The discussion of the disclosure of the prior art of Schmidt and Maxfield from paragraph 13 of the previous office action mailed on 12/15/2001 is incorporated here by reference.

In the arguments provided in an amendment filed on 6/14/2002 the applicant argued following:

- a) the prior art of Schmidt does not teach use of polymer platelet and with the oxygen scavenging system different from the present invention. It would not have been obvious to combine the prior art of Schmidt and Maxfield.

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With respect to the above argument, at the same time Maxfield teaches use of platelets in order to improve gas barrier property of the food. Therefore both compositions require good gas barrier properties in order to be utilized in the food packaging business. The combination of two compositions, each of which is taught by the prior art to be useful for the same purpose, in order to for a third composition that is to be used for the very same purpose may be prima facie obvious. *In re Susi*, 440 F.2d 442, 445, 169 USPQ 423, 426 (CCPA 1971). At the same time combination of two known compositions is expected to work in additive or cumulative manner. *In re Kerkhoven* 626 E.2d 846, 850 205 USPQ 1069, 1072 (CCPA 1980). Therefore as stated in *In re Vaeck* combination is proper since it would result in a composition having good gas barrier property absent unexpected results.

The examiner acknowledges that the oxygen scavenging system of the present invention is different from that of the prior art of record. Making it as part of the limitation of all independent claims would greatly advance the prosecution of the application at hand.

Applicant's arguments with respect to the prior art of Mathews and Deguchi are moot, due to discontinuation of these rejections against present claims.

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after



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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katarzyna W. Lee whose telephone number is (703) 306-5875. The examiner can normally be reached on Mon-Thurs 6:30 AM-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (703) 306-2777. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

KIWL  
August 15, 2002

EDWARD J. CAIN  
PRIMARY EXAMINER  
GROUP 1500

